Atty's Docket: Beiersdorf 540.1-wcg

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefore. Please charge the required fee to Deposit Account No. 14-1263.

ADDITIONAL FEES

Please charge any further insufficiency of fees, or credit any excess to Deposit Account No. 14-1263.

REMARKS

Claims 1, 3,5-6, and 9-13 are pending in the application. The claims have been rejected as allegedly being obvious over the combination of WO 649 to Morgan et al., and US '645 to Sandvig.

The rejection is addressed below.

The Claimed Plaster Demonstrates Unexpected Results

The thrust of Examiner's rejection is that Sandvig teaches the use of polyurethane foam in ophthalmic bandages, therefore it would be obvious to substitute Sandvig's foams into Morgan's bandage.

Sandvig discloses that his bandage may comprise "any polyurethane, polyether, polyolefin, etc." This group of polymer genera represent perhaps hundreds of thousands of different foam species. Yet, Examiner has not provided any technical reasoning, or actual evidence, to explain why combining Morgan and Sandvig would lead persons in the art to arrive at the limitation in claim 1 "aqueous aliphatic dispersions of polyurethane." See claim 1.

Examiner has also stated that unexpected and superior results of the claimed plaster have not demonstrated the criticality of the claimed subject matter's structure and composition. In response we bring Examiner's attention to the methodology beginning on page 5, and Table 2 that bridges pages 7-8 of the specification.

A brief summary of the different test samples tested is as follows:

- Example 1, page 5 – the occlusive plaster prepared with air blown foam prepared with aliphatic polyurethane dispersions.
- Example 2, page 6 – same as Example 1, except that a cover coat was added to the top foam layer.
- Example3, page 7 – a single layer plaster prepared with ***aromatic*** polyurethanes.

The results shown on page 8 demonstrate that when compared to Example 1 (made with aliphatic polyurethanes), Examples 2 and 3 show virtually no air permeability. In addition, Examples 2 and 3 demonstrate substantially diminished water vapor permeability in comparison to Example 1. Specifically, Example 3 provides a 65% decrease in water permeability. This data demonstrate that the claimed article is superior over alternatives known in the art, and thus, are sufficient to rebut a prima facie case of obviousness. MPEP 716.02(a).

From these data, it is clear that the plaster prepared from aliphatic polyurethanes provided far better air and water permeability properties than those made with aromatic polyurethanes. These results demonstrate the criticality of the aliphatic polyurethanes to the overall properties of the claimed subject matter. Importantly, given Morgan/Sandvig's broad generic teaching of polyurethanes and other polymer to be used in their foams, the unexpected and superior properties imparted by aliphatic polyurethanes. MPEP 716.02(d).

Most importantly, Morgan and Sandvig do not teach or suggest the desirability of aliphatic polyurethanes. Further, there is nothing in either reference that would have made the unexpected and superior permeability properties reasonably expected. For this reason the instant rejection over Morgan and Sandvig should be withdrawn.

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Morgan and Sandvig Do Not Provide an Enabling Reference

It is well established that a proper reference under 35 USC§§102 or 103 must be enabling in the sense of 35 USC § 112, paragraph 1. It is suggested that the Morgan and Sandvig references are not enabling to that extent.

The proper test of a description in a publication as a bar to a patent as the clause is used in section 102(b) requires a determination of whether one skilled in the art to which the invention pertains could take the description of the invention in the printed publication and combine it with his own knowledge of the particular art and from this combination be put in possession of the invention on which a patent is sought." [Emphasis added] . *In re Le Grice*, 133 USPQ 365, 374 (CCPA 1962); *In re Hoeksema*, 158 USPQ 596. 601 (CCPA 1968).

In view of the results described above, it is clear that neither Morgan nor Sandvig, taken individually or in combination, would provide sufficient guidance to provide a plaster with the objectively measured permeability properties. Nor has Examiner provided such a rationale.

In accordance with the foregoing remarks and data, it is respectfully requested that the rejections be withdrawn and the application be allowed.

Respectfully Submitted,

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